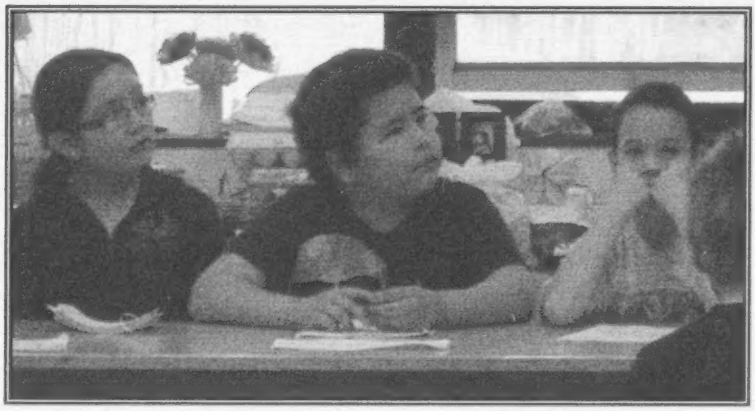
MSAT

METIS SETTLEMENTS APPEAL TRIBUNAL



2009

Annual Report

Students from Hillview School (top) in East Prairie and
Kikino Elementary School (bottom) participate in mock hearings

Report

211(1) On or before March 31 in each year, the Appeal Tribunal must give to the Minister and the General Council a report for the year ending on the preceding December 31, showing

(a) the nature of its activities
(b) the general manner in which it dealt with matters coming before it;
(c) any other matter that the Minister directs.

(2) The Minister must table the Appeal Tribunal's report in the Legislative Assembly if it is then sitting or, if it is not sitting, within 15 days after the commencement of the next sitting.

[*Metis Settlements Act*, R.S.A. 2004]

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A message from the Chair

Tansi:

I am pleased to present the Appeal Tribunal's annual report for 2009. As required by statute, this report summarizes the *nature of MSAT's activities* and the *general manner in which MSAT dealt with matters that came before it* in 2009.

The Appeal Tribunal received appeals across a wide range of areas. These include the "traditional" areas of appeal such as membership appeals, land disputes, and oil and gas appeals/requests for amendments, but also include other appeals under the Metis Settlements General Council Timber Policy and Financial Interest (Conflict of Interest) Policy.

Whatever the appeal, The Appeal Tribunal emphasized the use of community-based conciliation and mediation approaches to resolve disputes without the need for a hearing. However, when hearings were necessary, the Appeal Tribunal committed itself to running the hearings fairly. It also committed itself to ensuring its decisions clearly addressed jurisdictional issues (rights of appeal), clarified applicable legislation, and identified relevant aspects of Metis culture and identity.

The Appeal Tribunal also maintained strong communications with the Metis Settlements General Council (General Council), the Minister of Aboriginal Relations, and Settlement communities. The Appeal Tribunal led discussions about its priorities and approaches to its mandate and listened for feedback. The Appeal Tribunal also actively participated in the development of a new *Mandate and Roles Document* (MRD). The purpose of the MRD is to clarify key responsibilities and joint initiatives between General Council and the Minister that will ultimately determine key roles, competencies, and the Appeal Tribunal's future mandate and role as the Metis Settlements' dispute resolution body.

Looking ahead, the Appeal Tribunal will continue to implement community-based approaches that inform and provide those caught up in disputes with the tools to resolve those disputes locally. It will also continue to meet all its reporting and management responsibilities with a view to maintaining its standing as a respected Metis dispute resolution institution with great integrity.

Finally, it continues to be my great privilege to work with colleagues, leaders, and staff whom I hold in high esteem. Together, we will continue to reach for and maintain the highest standards of fairness, accountability, effectiveness, and respect for Metis culture and identity.

Stan Delorme

Stan Delorme
Chair, Metis Settlements Appeal Tribunal

Who we are

With the appointment of Trevor Gladue to the Appeal Tribunal in November 2009,[1] all seven members of the Appeal Tribunal are Metis. While it is not a requirement that all members of the Appeal Tribunal be Metis, it is an asset. This is especially so given the Appeal Tribunal's mandate to exercise its powers and duties with a view to preserving and enhancing Metis culture and identity and furthering the attainment of self-governance by Metis Settlements under the laws of Alberta.

The Appeal Tribunal members bring a range of skills and experience to the job. This range includes service at the highest offices in Canada, Boards of Education, Settlement Councils, General Council, and in Settlement communities as land and membership clerks and post-secondary training institutions.

The Appeal Tribunal also has a staff of seven people. Our staff and Tribunal members work together to ensure the Tribunal's investigations, hearings, and mediation processes are run in a consistent, fair, and culturally appropriate manner.

MSAT Board
Back, L to R: Allan Lamouche, Stan Delorme, Don Cunningham, Trevor Gladue
Front, L to R: Dorothy Anderson, Thelma Chalifoux, Violet Haggerty

Our vision

Our vision of the future is one of good, effective, and fair Metis self-governance that is enhanced through the Appeal Tribunal's culturally appropriate dispute resolution services.

[1] Trevor Gladue replaced a long serving and much respected member, Mr. John Brosseau, who became the Metis Settlements Ombudsman in the spring of 2009.

The nature and manner of our work in 2009
(What we did in 2009 & how we did it)

Objectives and strategies
The Appeal Tribunal identified key objectives and strategies. These include increasing *knowledge* of Accord legislation; *educating* stakeholders through its decisions and outreach initiatives; strengthening its *presence* at the community level by conducting its research and hearings in communities; and to *performing* its management and reporting duties at a consistently high level.

As set out below, the Appeal Tribunal is meeting its core mandate and the objectives and strategies it adopted are assisting in ensuring the Appeal Tribunal stays focused and on track as it moves forward.

The following tables were created to give a more detailed account for the type of work the Appeal Tribunal conducts on a yearly basis.

Table 1.1	Contact reports
Table 1.2	Appeals received
Table 1.3	Appeals conciliated, withdrawn and closed
Table 1.4	MSAT decisions and Land Access Panel amending orders issued

Tracking our work
The Appeal Tribunal uses a computerized log-in system to track its calls, tasks, and meetings. It has been using this system since 2008 because it makes for more accurate counts, and is consistent with our commitment to being transparent and accountable to our stakeholders.

Membership issues
The Appeal Tribunal continues to field questions and appeals on membership. The Appeal Tribunal issued two decisions on membership in 2009 (*see Table 1.4 on p.12).* These decisions clarified the process that must be followed by Settlement Councils and their administrations when considering membership applications.

Averaged out, these appeals took seven months to resolve.

Of special note in 2009 was the determination by the Alberta Court of Appeal that sections 75 and 90 of the *Metis Settlements Act* are unconstitutional (see *Peavine Métis Settlement v. Cunningham*, June 2009).

The Appeal Tribunal is taking great care to absorb the Court of Appeal's decision and to monitor the *leave to appeal* process now underway to the Supreme Court of Canada. The Appeal Tribunal is taking these steps to ensure any membership appeals brought before it are dealt with fairly, and in a manner consistent with the latest decision by the Courts.

Initial Contact Reports

Year	2007	2008	2009
Membership	10	54	69
Land Disputes	54	276	509
Surface Access / Compensation	350	402	253
ELLAP	--	--	32
Conflict of Interest	--	7	29
Mediation	--	8	28
Outreach	--	156	84
Administration	15	--	238
Other	--	135	154
Totals	**429**	**1038**	**1396**

Table 1.1

Land disputes

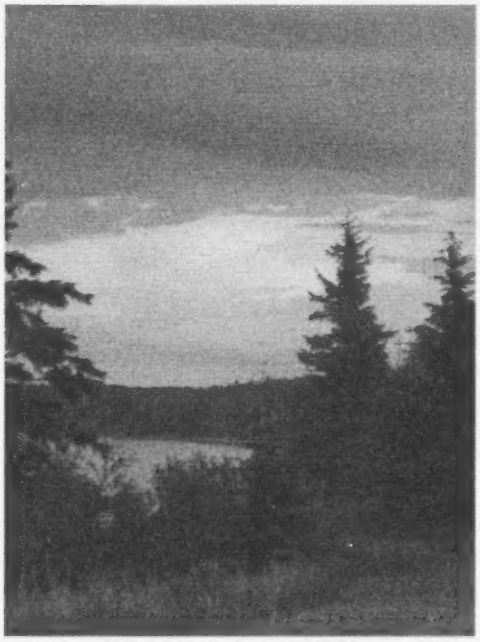
The Metis Settlements of Alberta have a land base roughly the size of Prince Edward Island (approximately 1.25 million acres). The Metis Settlements General Council has passed laws setting out different types of interests that members and others[2] can hold on the land. The *Metis Settlements Act*, and attendant regulations, put registration structures and systems in place.

As in any jurisdiction where land interests may be bought, sold, leased, or willed through estate instructions, disputes often arise over those interests. This is reflected in the 509 contacts received or initiated by the Appeal Tribunal concerning land disputes. As set out in Table 1.2, the Appeal Tribunal received 19 new land appeals and issued six decisions (*see Table 1.4 on p.12*) where the Appeal Tribunal clarified the process for getting and losing interests and the rights attached to existing interests in land.

Many of the appeals in this area turned on the question of whether appeals were filed within the 30 day appeal period required by the *Metis Settlements General Council Land Policy*.

New Appeals Received			
Year	2007	2008	2009
Membership	3	4	5
Land Disputes[3]	12	11	19
Surface Access / Compensation	6	12	6
ELLAP	–	–	–
Conflict of Interest	–	1	–
Trespass	–	–	1
Other	1	1	1
Totals	22	29	32

Table 1.2



The Appeal Tribunal ruled on more than one occasion that the rights of appeal set out in the *Land Policy* are not absolute, they are conditional.

By this, the Tribunal means that the appeal requirements set out in the *Land Policy* --including time limits for filing an appeal--must be met. The Appeal Tribunal also made it clear that it would only extend appeal periods if it was proven by the Appellant that there were special circumstances--such as improper or confusing practices by Settlement Council or its administration--to warrant such an extension.

[2] The *Metis Settlements General Council Land Policy* and *Metis Settlements Land Protection* Act set very strict limits on the types of interest that can be held by non-Settlement members.

[3] Land Disputes also include appeals concerning estate instructions as generally this type of appeal is tied to the land.

On average, it took the Appeal Tribunal one year and two months to resolve land disputes. While this is an improvement on the previous average of over eighteen months to resolve matters, the Appeal Tribunal believes it can and will see significant reductions in the average as it continues to implement the community-based efficiency strategies set out in its Business Plans.

Surface access / compensation

The Land Access Panel and Existing Leases Land Access Panel are responsible for deciding right of entry applications, compensation matters, and assignments of interest. Approximately 253 contacts were made in this area and the Tribunal received six new surface access or compensation appeals in 2009, issuing three decisions determining rights to compensation.

The Appeal Tribunal streamlined its process for issuing simple amendments to reflect changes in operators or existing mineral lease holders. When an operator or existing mineral lease holder shows it meets the criteria[4] for selling or assigning its rights or interests to a third party, those changes are immediately processed by the Appeal Tribunal. This approach is consistent with the approach utilized by the Alberta Surface Rights Board, and, using this approach, the Appeal Tribunal issued 147 amending orders in 2009. This represents an increase of 300% percent from 44 orders issued in 2008 and a 1164% percent increase from the 17 orders issued in 2007.

ELLAP

The Existing Leases Land Access Panel continues to operate. It received an application in 2009 by an existing mineral lease holder for a right of entry order. It granted the right of entry order and, pending the outcome of negotiations currently underway, may be called upon to determine compensation in 2010.

[4] The Appeal Tribunal's streamlined amendment process requires that applicants confirm whether they are contractually bound to seek the occupant's consent before assigning their interests.

Conflict of interest

The Appeal Tribunal is named in the *Metis Settlements General Council Financial Interest Policy*. This Policy sets out rules for determining when a Settlement Councillor has a financial interest in a manner. These types of disputes are more commonly referred to as conflicts of interest.

The Appeal Tribunal is committed to providing dispute resolution services whenever mandated to do so. It received an appeal in writing in late 2008 concerning an alleged conflict of interest. A preliminary hearing was held in December 2009 and the Panel is considering whether to grant permission for the matter to go to a full hearing in 2010.

Mediation

The Appeal Tribunal is committed to using mediation to resolve disputes. Mediation gives the parties control over the end result. Generally, this leads to outcomes that are more likely to be embraced and willingly followed by all the parties. It also promotes understanding amongst participants about the (cultural and family) values, identity, needs and priorities of others. This understanding allows members and others to move beyond the dispute and continue working together and to making progress under the *Alberta-Metis Settlements Accord*.

Though the Appeal Tribunal did not run any formal mediations in 2009, it raised it as an option in many instances, and as Table 1.3 shows it used its sister--conciliation[6]--to successfully reduce its case load by 25%.

Appeals resolved without going to a hearing			
Year	**2007**	**2008**	**2009**
Membership			
Conciliation	1	–	–
Withdrawn[5] / Closed	1	1	–
Land Disputes			
Conciliation	1	2	3
Withdrawn / Closed	5	1	2
Surface Access / Compensation			
Conciliation	1	4	2
Withdrawn / Closed	4	2	2
Other			
Conciliation	–	–	–
Withdrawn / Closed	1	1	1
Total	**14**	**11**	**10**

Table 1.3

[5] Withdrawn / closed include files that were not conciliated but rather withdrawn/closed for alternate reasons varying from lack of jurisdiction and unable to contact the appellant to appellant changed their mind.

[6] Conciliation is the practice of meeting with appellants and respondents to identify the issues in dispute, identify applicable law, and encouraging all parties to talk to each other and to work matters out locally.

Outreach activities
(Community outreach)

The Appeal Tribunal is committed to raising awareness amongst Settlement members and other stakeholders about the work we do. The Appeal Tribunal does this because it believes that when members and others know about the work we do, they will use our services to resolve disputes that might otherwise impede progress under the *Alberta-Metis Settlements Accord*, or that might otherwise sour relations between neighbours or family members.

Outreach with the Kikino Elders Committee

The Appeal Tribunal concluded its tour of the Settlements in 2009. We met with East Prairie, Fishing Lake and Kikino Settlement Councils to discuss our commitment to creating better understanding of Settlement laws. We also met with Settlement youth in the schools. They performed skits that gave them an idea of how our hearings are conducted. The school sessions were followed with community suppers and discussions with community members and Elders to discuss the Tribunal's role and how they might use our services to resolve disputes in fair and culturally appropriate way.

Outreach with the students and staff from J.F. Dion School in Fishing Lake

While some of the discussion was quite spirited, all the feedback was most appreciated. The Tribunal is thankful to each and every Settlement community for opening its doors to us.

The Appeal Tribunal was also delighted to receive an invitation to speak at Kikino Metis Settlements Justice Forum in November 2009. The Tribunal Chair attended the event and spoke about the Tribunal's role in resolving disputes that affect community members.

(Outreach to decision-makers)
The Appeal Tribunal maintained its strong dialogue with key decision-makers. In this regard, we had very positive meetings with the Minister responsible for Aboriginal Relations and the Metis Settlements General Council Executive, Board and Assembly.

The Appeal Tribunal participated in the Metis Settlements General Council *Entities Workshop*. This workshop provided entities such as the Metis Settlements Land Registry, Region 10 Family Services, Settlement Sooniyaw Corporation, the Metis Settlements Ombudsman and the Appeal Tribunal with an opportunity to dialogue with Settlement leaders about our respective roles and to receive feedback on what is working, and what can be improved. It was a very positive workshop and the Appeal Tribunal looks forward to building on this dialogue.

The Appeal Tribunal also continued working with the Alberta Governance Secretariat to promote understanding of the Appeal Tribunal and to set the stage for future work under the *Alberta Agency Governance Framework*.

(Outreach to post-secondary students and professionals)
The Appeal Tribunal also continued to foster awareness and understanding of Metis Settlements' self-governance structure under the *Alberta-Metis Settlements Accord*, and the Tribunal's role by speaking to post-secondary students at the University of Alberta on two occasions, and by participating in the community placement program offered by the U of A Faculty of Native Studies.

(Outreach through the Metis Messenger and the MSAT Website)
The Appeal Tribunal was a regular contributor to the Metis Messenger newsletter in 2009. It used the Messenger to update members and other readers about its priorities, decisions, and upcoming community meetings.

The Appeal Tribunal also continued to update and refine its website. While the Tribunal continues to post its decisions and publications, such as the new business plan for 2009-2012, it has also improved the accessibility and usability of its applications forms by enabling stakeholders to fill out all our application forms on-line.

Appeals to the Alberta Court of Appeal
The Appeal Tribunal enjoys a review process that allows members and others to seek leave to appeal from the Alberta Court of Appeal to determine whether the Tribunal has made a mistake in interpreting the law, or in assuming jurisdiction over a matter. Having access to this type of review is good for those who use the Tribunal, and it is good for the Tribunal to receive constructive criticism of its decisions from time to time.

One matter was granted leave to appeal by the Alberta Court of Appeal in 2009. This involved the Appeal Tribunal's finding that in order to effectively assert an interest in land, one must first ensure that the interest is registered or recorded in the Metis Settlements Land Registry system. Rather than spending large amounts of money and time defending this particular decision, the Tribunal worked with the appellant to have the matter returned to the Tribunal for a re-hearing. This matter will be re-heard by the Tribunal in 2010.

In addition, the Court of Appeal issued its decision on how to best determine *cumulative impacts* under section 118(1)(c)(iii) of the *Metis Settlements Act*. In essence, the Court of Appeal found that the Appeal Tribunal did not make any errors in jurisdiction or law in determining cumulative impacts.

Appeal Tribunal decisions

The Appeal Tribunal issued 12 decisions in 2009. It also issued 147 oil and gas amending orders in 2009. For full copies of the decisions, see our website at www.msat.gov.ab.ca, or call our office at 780-422-1541 or toll free at 1-800-661-8864 for a free copy.

MSAT Decisions			
Year	2007	2008	2009
Membership	–	1	2
Land Disputes[7]	2	7	6
Surface Access / Compensation	4	6	3
Timber	–		1
Trespass	–	1	–
Conflict of Interest	–	–	–
Other	–	–	–
Total Decisions	6	15	12
Land Access Panel - LAP Orders			
Amendments to Right of Entry and Compensation Orders	17	44	147

Table 1.4

[7] Land Disputes include one estate instructions appeal in 2008 and another in 2009.

Fiscal responsibility

The Appeal Tribunal continues to utilize and adhere to current government standards and practices in managing its finances, general administration, planning, reporting, and human resources.

The Appeal Tribunal reports its activities on a calendar year basis, from January 1 to December 31. However, its financial reporting period follows the provincial government fiscal year from April of the preceding year (2008) to March of the current year otherwise reported on (2009).

The table below compares Tribunal expenditures for 2008/2009 with those of 2007/2008.

	2008/2009		2007/2008	
	Authorized Budget	Actual Expenditure	Authorized Budget	Actual Expenditure
Manpower	$ 603,050	$ 558,949	$ 526,200	$ 502,195
Supplies & Services	$ 471,950	$ 549,658	$ 507,600	$ 451,280
Asset Purchase		$ 7,920[8]		
Total	**$1,075,000**	**$1,116,527**	**$1,033,800**	**$ 953,475**
Unexpended (Over-expended)		(41,527)		80,325

[8] The Tribunal purchased recording equipment. This equipment ensures there is a full and accurate record of all hearings.

Appendix One

METIS SETTLEMENTS APPEAL TRIBUNAL

ORDERS ISSUED – January 2009 to December 2009

- Order 207 Compensation Order
  Between: Stewart Cunningham, Appellant, and
  Peavine Metis Settlement, Respondent, and
  Metis Settlements General Council, and
  Metis Settlements Land Registry, Other Parties

- Order 206 Timber Dispute
  Between: Becky Mearon, Appellant, and
  Elmer Anderson, and
  Peavine Metis Settlement, Respondents

- Order 205 Land Dispute
  Between: Wayne Cardinal, Appellant, and
  Floyd Thompson, Respondent, and
  Kikino Metis Settlement, Respondent

- Order 204 Land Dispute
  Between: Gerald Ladouceur, Appellant, and
  Buffalo Lake Metis Settlement, Respondent, and
  Jerry Ladouceur - Affected Party, and
  Dawn Auger - Affected Party, and Metis Settlements Land Registry, Other Parties

- Order 203 Compensation Order
  Between: Joseph D. Blyan (Land Trustee), Appellant and,
  Metis Settlements General Council, Buffalo Lake Metis Settlement, Rocky River Petroleum Ltd., Laverne J. Reid, and Marty E. Howse, Respondents, and
  Metis Settlements Land Registry, Other Party

- Order 202 Land Dispute
  Between: Tanis Augier, Appellant and,
  Buffalo Lake Metis Settlement, Respondent and
  LeRoy W. Augier, Respondent and
  Metis Settlements General Council, Edwin Augier, Margaret Araujo, Duane Couteriell, and
  Metis Settlements Land Registry, Other Parties

- Order 201 Land Dispute (Estate)
  Between: -------- Appellant and,
  Clifford Auger, Esther Auger, Solomon Richard Auger, Venice Rose Auger, Estate of Blair Kevin Auger, Estate of Gilbert Jermie Auger, Bella Halcrow, Lydia Halcrow, Roberta Halcrow, Lena Giroux, and East Prairie Metis Settlement, Respondents

- **Order 200 Land Dispute**
  Between: Glenna Cunningham, Appellant and,
  Peavine Metis Settlement, Respondent

- **Order 199 Land Dispute**
  Between: Judy Stuart, Appellant and,
  Peavine Metis Settlement, Respondent

- **Order 198 Compensation Order**
  Between: Lorraine Anderson, Appellant and,
  Peavine Metis Settlement and Arrow Energy Ltd., Respondents

- **Order 197 Membership Dispute**
  Between: Marilyn Lamouche and Dave Lamouche Jr., Appellants and,
  Gift Lake Metis Settlement, Respondent

- **Order 196 Membership Dispute**
  Between: Eli Cunningham, Appellant and,
  Gift Lake Metis Settlement, Respondent

For more information, contact us at:

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